

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-044
Forest Conservation Plan No. H-145
2131 East Randolph Road
Date of Hearing: April 21, 2022

MAY 10 2022

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on December 16, 2021, Nova Randolph, LLC ("Applicant") filed an application for approval of a preliminary forest conservation plan on approximately 10.82 acres of land located at 2131 East Randolph Road ("Subject Property") in the Fairland/Colesville Policy Area and 1997 Fairland Master Plan area; and

WHEREAS, Applicant's preliminary forest conservation plan application was designated Forest Conservation Plan No. H-145 2131 East Randolph Road ("Forest Conservation Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board Staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board dated April 8, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 21, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Rubin, seconded by Commissioner Verma, with a vote of 5-0; Chair Anderson and Commissioners Cichy, Patterson, Rubin, and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. H-145 on the Subject Property, subject to the following conditions:¹

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successor in interest to the terms of this approval.

1. Prior to the start of any demolition, clearing, grading or construction for the development Application, whichever comes first, the Applicant must submit a Deed of Release of Conservation Easement for the existing Category I Conservation Easement recorded among the County Land Records in Book 13178, Page 412 and identified on Plat No. 22668 in a form approved by the M-NCPPC Office of General Counsel. The Deed of Release must be recorded in the Montgomery County Land Records. The entirety of the existing easement remains in full force and effect until the Deed of Release has been approved and recorded in the Montgomery County Land Records.
2. The Applicant must submit a Final Forest Conservation Plan ("FFCP") for review and approval prior to obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for this Subject Property.
3. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling at least 13.5 caliper inches, with planting locations to be shown on the FFCP.
4. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A, and ensures the protection of environmentally sensitive features.*

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law ("FCL").

The CRTF Zone, which is assigned a Land Use Category of High Density Residential (HDR) as defined in Section 22A-3 of the FCL and in the Land Use Table of the Trees Technical Manual. This results in an afforestation threshold of 15% and a conservation threshold of 20% of the Net Tract Area.

The tract area for forest conservation purposes includes the 10.82-acre Subject Property plus 0.67 acres of offsite disturbance associated with this Application, for a total net tract area of 11.49 acres. There is a total of 3.27 acres of existing forest on the Subject Property. The Application proposes to remove all 3.27 acres of forest. The proposed forest clearing generates a reforestation requirement of 4.84 acres. The Applicant proposes to meet the planting requirement offsite.

The 3.27 acres of forest proposed to be removed onsite is the lowest priority area for retention (Priority Area 4) in the Trees Technical Manual and does not contain any other environmental sensitive features. Additionally, it is early successional forest with a high percentage of invasive species.

Additionally, the Property has a previously recorded Category I conservation easement in the southwest corner of the Site and a portion of an offsite easement on platted Parcel C. The amount of easement to be removed is 0.11 acres onsite and 0.05 acres offsite for a total of 0.16 acres. The on-site easement was included in the existing forest calculations so is being mitigated per the worksheet in addition to being mitigated at a rate of 1:1. With the combination of the worksheet mitigation and the 1:1 additional mitigation, the total replacement amount is greater than the standard 2:1 replacement rate. The off-site 0.05-acre easement to be removed is being mitigated at a rate of 2:1, bringing the total offsite mitigation requirement to 5.05 acres for the project.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such resources must be left in an undisturbed condition.

This Application will require the removal of six (6) Protected Trees and CRZ impact to nineteen (19) Protected Trees, which will be retained and subject to stress reduction measures, as identified in the Staff Report. The Protected Trees with this Application are related to the Historic Conley House to the southwest of the Property. Any tree that is part of a historic site is considered protected. The six tree removals are between 3" DBH and 18" DBH. The majority of the trees being impacted are between 1" DBH and 20" DBH. Only three Protected Trees are greater than 30" DBH and all are to be retained.

In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the Variance will not confer a special privilege on the Applicant as the removal and disturbance to the specified trees are due to the development of the Property, location of the trees, and necessary site design requirements. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. The granting of this Variance is not a special privilege that would be denied to other applicants.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested Variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions, development standards of the zone, and necessary design requirements of this Application.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested Variance is a result of the existing conditions and the proposed site design and layout of the Subject Property, and not as a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Variance will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being removed are not located within a stream buffer, wetland or Special Protection Area. The Application proposes mitigation for the removal of these six trees by planting larger

caliper trees on-site. These trees will replace water quality functions that may be lost by the removed trees. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves replacement of Protected Trees at a ratio of approximately one caliper inch replaced for every four inches removed, as conditioned as part of this approval. No mitigation is required for Protected Trees impacted but retained.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is MAY 10 2022 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Rubin, seconded by Vice Chair Verma, with Chair Anderson, Vice Chair Verma, Commissioners Cichy, and Rubin voting in favor of the motion, and Commissioner Patterson absent at its regular meeting held on Thursday, April 28, 2022, in Wheaton, Maryland.



Casey Anderson, Chair
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